

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Rosa Laura Cervantes, Individually
and as Representative of the Estate of
Eloy Tudon Hernandez, Deceased
and next Friend of Joel Alejandro
Tudon Cervantes, Sergio Orlando
Tudon Cervantes and Eloy Obed
Tudon Cervantes, minors,

Plaintiffs,

V.

C.A. No. 07C-06-249-JRJ

Bridgestone/Firestone North,
Tire Company, LLC; Bridgestone/
Firestone, Inc.; Bridgestone/
Firestone Research, LLC,
Bridgestone Americas Holding, Inc.,
Firestone Tire & Rubber Company
and Ford Motor Company,

Defendants.

Date Submitted: September 22, 2008

Date Decided: January 29, 2009

*Upon Defendants' Joint Motion to Dismiss on the
Grounds of Forum Non Conveniens: **DENIED***

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Somers S. Price, Jr., Esq., 1313 N. Market Street, P.O. Box 951, Wilmington, Delaware, 19899, attorney for Defendants Bridgestone/Firestone North American Tire, LLC; Bridgestone/Firestone, Inc.; Bridgestone/Firestone Research, Inc.; Bridgestone Americas Holding, Inc.; and Firestone Tire and Rubber Company

Jurden, J.

I. INTRODUCTION

Defendants ask the Court to dismiss this action based on *forum non conveniens*, claiming that if this Court denies their motion, it will send a message that “[t]he Courts of the State of Delaware are open to any citizen of the world...irrespective of the hardship presented to U.S. corporations who have chosen to organize themselves under the laws of Delaware.”¹ Because the defendants fail to demonstrate that Mexico is available as an alternative forum, the Court need not reach the issue of whether litigating in Delaware (as opposed to Mexico) would pose an overwhelming hardship to defendants, and **DENIES** the defendants’ motion.

II. BACKGROUND

A. The Defendants

The appropriate Bridgestone defendant is Bridgestone Firestone North American Tire, LLC, (“Firestone”). Firestone is a Delaware limited liability company with its principal place of business in Tennessee.² Ford is a Delaware corporation, with its principal place of business in Michigan.³ Both Firestone and Ford conduct extensive business in Delaware.⁴ Neither corporation conducts significant business in Durango, Mexico.⁵

B. The Accident

Plaintiffs allege that on June 2, 2006, Eloy Tudon Hernandez, a Mexican citizen from the Mexican state of Coahuila de Zaragoza, was driving a 1996 Ford Explorer equipped with a Firestone Radial ATX tire (the “Recall Tire”) on Mexican Federal Highway 40 between the Mexican State of Coahuila de Zaragoza and the Mexican State of Durango.⁶ Plaintiffs further

¹ Def.’s Rep. Br. in Supp. of Joint Mot. to Dismiss on the Grounds of *Forum Non Conveniens* (“Reply Br.”) at 1, Docket Item (“D.I.”) .

² See *Cervantes v. Bridgestone/Firestone North American Tire Co.*, 2008 WL 3522373, at *1 (Del. Super. Aug. 14, 2008).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

allege that the Recall Tire suffered a tread separation, which caused Hernandez to lose control of the Ford Explorer. The Ford Explorer rolled over, killing Hernandez.⁷

According to the defendants, Hernandez's speed and the poor condition of the tires caused the accident.⁸

III. DISCUSSION

A. Mexico is Not Available as an Alternative Forum

Application of the doctrine of *forum non conveniens* “presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them.”⁹ The determination of *forum non conveniens* must be made at the time plaintiff brings suit.¹⁰ In this case, Mexico is not available as an alternative forum. As noted by this Court in its decision denying Defendants’ Joint Motion to Apply and Determine the Law of Mexico, “Mexican courts have determined that they are not the proper forum for suits of this kind against non-resident defendants.”¹¹ Defendants’ offer to submit to jurisdiction in Mexico does not make Mexico an available forum.¹² In a personal injury case such as this, where the defendants are not domiciled in Mexico, a Mexican court cannot have “competencia,” and the non-domiciled defendants cannot confer it.¹³ Defendants’ reliance on *Gonzalez*¹⁴ for the proposition that a Mexican court could exercise competencia if the plaintiffs would make a good faith effort to invoke the competencia of a Mexican court is misplaced. The plaintiff in *Gonzalez* sued

⁷ *Id.*

⁸ See Defs.’ Op. Br. at 2.

⁹ *Harry David Zutz Ins. v. H.M.S. Assoc. Ltd.*, 360 A.2d 160, 165-66 (Del. 1976).

¹⁰ *Dietrich v. Texas Nat’l Petroleum Co.*, 193 A.2d 579, 588-89 (Del. Super. 1963).

¹¹ *Cervantes*, 2008 WL 3522373, at *3 (citing *In re Bridgestone/Firestone Inc., Tire Products Liability Action*, MDL No. 1373 (S.D. Ind. July 16, 2007)).

¹² See *Dietrich*, 193 A.2d at 588-89 (“...defendant’s unilateral offer to submit to another jurisdiction...could not govern where defendant was not subject to service of process in such other jurisdiction when plaintiff brought his suit.”); See also *Parvin v. Kaufmann*, 236 A.2d 425, 427 (Del. 1967) (“The fact that the individual defendants have offered to appear voluntarily in...[the proposed alternative forum] does not change the situation.”)

¹³ Pl.’s Consol. Resp. and Br. at 11 (citing Lic. Alberto Chàvez Bustos Expert Op. on Mexican Law at ¶6), D.I. 100; See Decl. of Armando Garcia Estrada, Ex. A to Pls.’ Sur-Reply Br. at 3, ¶ 9, D.I. 177.

¹⁴ *Pablo Alejandro Gonzalez v. Ford Motor Company*, No. 0306/2005 (Super. Ct. of Justice for the Fed. Dist.) (“*Gonzalez*”); Ex. 39 to Defs.’ Joint Mot. to Dismiss on the Grounds of *Forum Non Conveniens*, D.I. 61; Reply Br. at 12.

Mexican, not U.S., defendants.¹⁵ Because the Court has determined that there is no available alternative forum, the Court need not address the defendants' argument on overwhelming hardship. This Court is satisfied that a Mexican court does not and cannot have competencia to hear this personal injury case against the defendants, all of which are United States corporations. Consequently, defendants' Motion to Dismiss on the Grounds of *Forum Non Conveniens* is **DENIED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

¹⁵ See *Gonzalez*.